

HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR  
HOUSE BILL 436

49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009

AN ACT

RELATING TO PUBLIC SCHOOL PERSONNEL; AMENDING THE SCHOOL  
PERSONNEL ACT TO CLARIFY THE PROCESS FOR TERMINATION AND  
DISCHARGE OF SCHOOL EMPLOYEES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 22-10A-21 NMSA 1978 (being Laws 1967,  
Chapter 16, Section 113, as amended) is amended to read:

"22-10A-21. EMPLOYMENT CONTRACTS--DURATION.--

A. All employment contracts between [~~local~~] school  
[~~boards~~] districts and [~~certified~~] licensed school [~~personnel~~]  
employees and between governing authorities of state agencies  
and [~~certified school instructors~~] licensed school employees  
shall be in writing on forms approved by the [~~state board~~]  
department or the state agency. These forms shall contain and  
specify the term of service, the salary to be paid, the method

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1 of payment, the causes for termination of the contract and  
2 other provisions required by [~~the regulations of the state~~  
3 ~~board~~] rules of the department or the state agency.

4 B. All employment contracts between [~~local~~] school  
5 [~~boards~~] districts and [~~certified~~] licensed school [~~personnel~~]  
6 employees and between governing authorities of state agencies  
7 and [~~certified school instructors~~] licensed school employees  
8 shall be for a period of one school year except:

9 (1) contracts for less than one school year  
10 are permitted to fill personnel vacancies [~~which~~] that occur  
11 during the school year;

12 (2) contracts for the remainder of a school  
13 year are permitted to staff programs when the availability of  
14 funds for the programs is not known until after the beginning  
15 of the school year;

16 (3) contracts for less than one school year  
17 are permitted to staff summer school programs and to staff  
18 federally funded programs in which the federally approved  
19 programs are specified to be conducted for less than one school  
20 year;

21 (4) contracts not to exceed three years are  
22 permitted for [~~certified~~] licensed school administrators in  
23 public schools who are engaged in administrative functions for  
24 more than one-half of their employment time; and

25 (5) contracts not to exceed three years are

1 permitted at the discretion of the [~~local~~] school [~~board~~]  
 2 districts for [~~certified school instructors~~] licensed school  
 3 employees in public schools who have been employed in the  
 4 school district for three consecutive school years.

5 C. Persons employed under contracts for periods of  
 6 less than one school year as provided in Paragraphs (1) and (2)  
 7 of Subsection B of this section shall be accorded all the  
 8 duties, rights and privileges of the [~~Certified~~] School  
 9 Personnel Act.

10 D. In determination of eligibility for unemployment  
 11 compensation rights and benefits for [~~certified school~~  
 12 ~~instructors~~] licensed school employees where those rights and  
 13 benefits are claimed to arise from the employment relationship  
 14 between school districts or governing authorities of state  
 15 agencies [~~or local school boards~~] and [~~certified school~~  
 16 ~~instructors~~] licensed school employees, that period of a year  
 17 not covered by a school year shall not be considered an  
 18 unemployment period.

19 E. Except as provided in Section [~~22-10-12~~]  
 20 22-10A-22 NMSA 1978, a person employed by contract pursuant to  
 21 this section has no legitimate objective expectancy of  
 22 reemployment, and no contract entered into pursuant to this  
 23 section shall be construed as an implied promise of continued  
 24 employment pursuant to a subsequent contract."

25 Section 2. Section 22-10A-22 NMSA 1978 (being Laws 1967,

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1 Chapter 16, Section 114, as amended) is amended to read:

2 "22-10A-22. NOTICE OF REEMPLOYMENT--TERMINATION.--On or  
3 before the last day of the school year of the existing  
4 employment contract, the local [~~school board~~] superintendent or  
5 the governing authority of the state agency shall serve written  
6 notice of reemployment or termination on each [~~certified school~~  
7 ~~instructor~~] licensed school employee employed by the school  
8 district or state agency. A notice of reemployment shall be an  
9 offer of employment for the ensuing school year. A notice of  
10 termination shall be a notice of intention not to reemploy for  
11 the ensuing school year. Failure of the local [~~school board~~]  
12 superintendent or the governing authority of the state agency  
13 to serve a written notice of reemployment or termination on a  
14 [~~certified school instructor~~] licensed school employee shall be  
15 construed to mean that a notice of reemployment has been served  
16 upon the person for the ensuing school year according to the  
17 terms of the existing employment contract [~~but~~] and subject to  
18 any additional compensation allowed other [~~certified school~~  
19 ~~instructors~~] licensed school employees of like qualifications  
20 and experience employed by the school district or state agency.  
21 Nothing in this section shall be construed to mean that failure  
22 of a local [~~school board~~] superintendent or the governing  
23 authority of the state agency to serve a written notice of  
24 reemployment or termination shall automatically extend a  
25 [~~certified school instructor's~~] licensed school employee's

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1 employment contract for a period in excess of one school year."

2 Section 3. Section 22-10A-23 NMSA 1978 (being Laws 1967,  
3 Chapter 16, Section 115, as amended) is amended to read:

4 "22-10A-23. REEMPLOYMENT--ACCEPTANCE--REJECTION--BINDING  
5 CONTRACT.--

6 A. Each [~~certified school instructor~~] licensed  
7 school employee shall deliver to the local [~~school board of the~~  
8 ~~school district~~] superintendent or to the governing authority  
9 of the state agency in which the [~~person~~] licensed school  
10 employee is employed a written acceptance or rejection of  
11 reemployment for the ensuing school year within fifteen days  
12 from the following:

13 (1) the date written notice of reemployment is  
14 served upon the person; or

15 (2) the last day of the school year when no  
16 written notice of reemployment or termination is served upon  
17 the person on or before the last day of the school year.

18 B. Delivery of the written acceptance of  
19 reemployment by a [~~certified school instructor~~] licensed school  
20 employee creates a binding employment contract between the  
21 [~~certified school instructor~~] licensed school employee and the  
22 [~~local~~] school [~~board~~] district or the [~~governing authority of~~  
23 ~~the~~] state agency until the parties enter into a formal written  
24 employment contract. Written employment contracts between  
25 [~~local~~] school [~~boards~~] districts or [~~governing authorities of~~]

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1 state agencies and [~~certified school instructors~~] licensed  
2 school employees shall be executed by the parties not later  
3 than ten days before the first day of a school year."

4 Section 4. Section 22-10A-24 NMSA 1978 (being Laws 1986,  
5 Chapter 33, Section 22, as amended) is amended to read:

6 "22-10A-24. TERMINATION DECISIONS--LOCAL [~~SCHOOL BOARD~~]  
7 SUPERINTENDENT--GOVERNING AUTHORITY OF A STATE  
8 AGENCY--PROCEDURES.--

9 A. A local [~~school board~~] superintendent or  
10 governing authority of a state agency may terminate an employee  
11 with fewer than three years of consecutive service for any  
12 reason it deems sufficient. Upon request of the employee, the  
13 local superintendent or state agency administrator shall  
14 provide written reasons for the decision to terminate. The  
15 reasons shall be provided within ten working days of the  
16 request. The reasons shall not be publicly disclosed by the  
17 superintendent, administrator, local school board or governing  
18 authority. The reasons shall not provide a basis for  
19 contesting the decision under the School Personnel Act.

20 B. Before terminating [~~a noncertified~~] an  
21 unlicensed school employee, the local [~~school board~~]  
22 superintendent or governing authority shall serve the  
23 unlicensed employee with a written notice of termination.

24 C. An employee who has been employed by a school  
25 district or state agency for three consecutive years and who

1 receives a notice of termination pursuant to either Section  
 2 [~~22-10-12~~] 22-10A-22 NMSA 1978 or this section may request an  
 3 opportunity to [~~make a statement to~~] be heard by the local  
 4 [~~school board~~] superintendent or governing authority on the  
 5 decision to terminate [~~him~~] the employee by submitting a  
 6 written request to the local superintendent or state agency  
 7 administrator within five working days from the date written  
 8 notice of termination is served upon [~~him~~] the employee. The  
 9 employee may also request in writing the reasons for the  
 10 termination action [~~to terminate him~~]. The local  
 11 superintendent or state agency administrator shall provide  
 12 written reasons for the notice of termination to the employee  
 13 within five working days from the date the written request for  
 14 a [~~meeting~~] hearing and the written request for the reasons  
 15 were received by the local superintendent or state agency  
 16 administrator. Neither the local superintendent or state  
 17 agency administrator nor the local school board or governing  
 18 authority shall publicly disclose [~~its~~] the reasons for  
 19 termination.

20 D. A local [~~school board~~] superintendent or  
 21 governing authority may not terminate an employee who has been  
 22 employed by a school district or state agency for three  
 23 consecutive years without just cause.

24 E. The employee's request pursuant to Subsection C  
 25 of this section shall be granted if [~~he~~] the employee responds

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1 to the local superintendent's or state agency administrator's  
2 written reasons as provided in Subsection C of this section by  
3 submitting in writing to the local superintendent or state  
4 agency administrator a contention that the decision to  
5 terminate [him] was made without just cause. The written  
6 contention shall specify the grounds on which it is contended  
7 that the decision was without just cause and shall include a  
8 statement of the facts that the employee believes support [his]  
9 the employee's contention. This written statement shall be  
10 submitted within ten working days from the date the employee  
11 receives the written reasons from the local superintendent or  
12 administrator. The submission of this statement constitutes a  
13 representation on the part of the employee that [he] the  
14 employee can support [his] the employee's contentions and an  
15 acknowledgment that the local school board or governing  
16 authority may offer the causes for its decision and any  
17 relevant data in its possession in rebuttal of [his] the  
18 employee's contentions.

19 F. A local [~~school board~~] superintendent or  
20 governing authority shall meet to hear the employee's statement  
21 in no less than five or more than fifteen working days after  
22 the local [~~school board~~] superintendent or governing authority  
23 receives the statement. The hearing shall be conducted  
24 informally in accordance with the provisions of the Open  
25 Meetings Act.

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1           G. For a hearing before the governing authority of  
2 a state agency, the employee and the [~~local superintendent or~~]  
3 state agency administrator may each be accompanied by a person  
4 of [~~his~~] choice. First, the [~~superintendent~~] state agency  
5 administrator shall present the factual basis for [~~his~~] the  
6 determination that just cause exists for the termination of the  
7 employee, limited to those reasons provided to the employee  
8 pursuant to Subsection C of this section. Then, the employee  
9 shall present [~~his~~] the employee's contentions, limited to  
10 those grounds specified in Subsection E of this section. The  
11 [~~local school board or~~] governing authority may offer such  
12 rebuttal testimony as it deems relevant. All witnesses may be  
13 questioned by the [~~local school board or~~] governing authority,  
14 the employee or [~~his~~] the employee's representative and the  
15 [~~local superintendent or~~] administrator or [~~his~~] the  
16 administrator's representative. The [~~local school board or~~]  
17 governing authority may consider only such evidence as is  
18 presented at the hearing and need consider only such evidence  
19 as it considers reliable. No record shall be made of the  
20 proceeding. The [~~local school board or~~] governing authority  
21 shall notify the employee and the [~~local superintendent or~~]  
22 administrator of its decision in writing within five working  
23 days from the conclusion of the meeting.

24           H. For a hearing before the local superintendent,  
25 the school employee may be accompanied by a person of the

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1 employee's choice. First, the school principal or other person  
2 responsible for supervising the school employee shall present  
3 the factual basis for the determination that just cause exists  
4 for the termination of the school employee, limited to those  
5 reasons provided to the school employee pursuant to Subsection  
6 C of this section. Second, the school employee shall present  
7 the school employee's contentions, limited to those grounds  
8 specified in Subsection E of this section. The school  
9 principal or other person responsible for supervising the  
10 school employee may offer such rebuttal testimony as the local  
11 superintendent deems relevant. All witnesses may be questioned  
12 by the school employee or the employee's representative, the  
13 school principal or other person responsible for supervising  
14 the school employee or the local superintendent. The local  
15 superintendent may consider only such evidence as is presented  
16 at the hearing and need consider only such evidence as the  
17 superintendent deems reliable. No record shall be made of the  
18 proceeding. The local superintendent shall notify the school  
19 employee of the decision in writing within five working days  
20 from the conclusion of the hearing.

21 I. The school employee may appeal the final  
22 decision of the local superintendent to the local school board.  
23 The local school board shall hold a hearing within fifteen  
24 working days of receiving a notice of appeal from the school  
25 employee.

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1           J. At the appeal hearing, both the local  
 2 superintendent and the school employee may be represented by  
 3 counsel and may call, examine and cross-examine witnesses. The  
 4 local school board may consider only such evidence as is  
 5 presented at the hearing and need consider only such evidence  
 6 as it considers reliable. No record shall be kept of the  
 7 proceeding. The local school board shall notify the employee  
 8 and the local superintendent of its decision within five  
 9 working days from the conclusion of the hearing."

10           Section 5. Section 22-10A-25 NMSA 1978 (being Laws 1986,  
 11 Chapter 33, Section 23, as amended) is amended to read:

12           "22-10A-25. APPEALS--INDEPENDENT ARBITRATOR--  
 13 QUALIFICATIONS--PROCEDURE--BINDING DECISION.--

14           A. An employee who is [~~still~~] aggrieved by a  
 15 decision of a local school board or governing authority  
 16 rendered pursuant to Section [~~22-10-14~~] 22-10A-24 NMSA 1978 may  
 17 appeal the decision to an independent arbitrator. A written  
 18 appeal shall be submitted to the local superintendent or state  
 19 agency administrator within five working days from the receipt  
 20 of the local school board's or governing authority's written  
 21 decision [~~or the refusal of the board or authority to grant a~~  
 22 ~~hearing~~]. The appeal shall be accompanied by a statement of  
 23 particulars specifying the grounds on which it is contended  
 24 that the decision was impermissible pursuant to Subsection [~~E~~]  
 25 H of Section [~~22-10-14~~] 22-10A-24 NMSA 1978 and including a

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1 statement of facts supporting the contentions. Failure of the  
2 employee to submit a timely appeal or a statement of  
3 particulars with the appeal shall disqualify ~~him~~ the employee  
4 for any appeal and render the local school board's or governing  
5 authority's decision final.

6 B. The local school board or governing authority  
7 and the employee shall meet within ten working days from the  
8 receipt of the request for an appeal and select an independent  
9 arbitrator to conduct the appeal. If the parties fail to agree  
10 on an independent arbitrator, they shall request the presiding  
11 judge in the judicial district in which the employee's public  
12 school or state agency is located to select one. The presiding  
13 judge shall select the independent arbitrator within five  
14 working days from the date of the parties' request.

15 C. A qualified independent arbitrator shall be  
16 appointed who is versed in employment practices and school  
17 procedures and who preferably has experience in the practice of  
18 law. No person shall be appointed to serve as the independent  
19 arbitrator who has any direct or indirect financial interest in  
20 the outcome of the proceeding, has any relationship to any  
21 party in the proceeding, is employed by the ~~local~~ school  
22 ~~[board or governing authority]~~ district or state agency or is a  
23 member of or employed by any professional or labor organization  
24 of which the school employee is a member.

25 D. Appeals from the decision of the local school

1 board or governing authority shall be decided after a de novo  
2 hearing before the independent arbitrator. The issue to be  
3 decided by the independent arbitrator is whether there was just  
4 cause for the decision of the local school board or governing  
5 authority to terminate the employee.

6 E. The de novo hearing shall be held within thirty  
7 working days from the selection of the independent arbitrator.  
8 The arbitrator shall give written notice of the date, time and  
9 place of the hearing, and such notice shall be sent to the  
10 employee and the local school board or governing authority.

11 F. Each party has the right to be represented by  
12 counsel at the hearing before the independent arbitrator.

13 G. Discovery shall be limited to depositions and  
14 requests for production of documents on a time schedule to be  
15 established by the independent arbitrator.

16 H. The independent arbitrator may issue subpoenas  
17 for the attendance of witnesses and for the production of  
18 books, records, documents and other evidence and shall have the  
19 power to administer oaths. Subpoenas so issued shall be served  
20 and enforced in the manner provided by law for the service and  
21 enforcement of subpoenas in a civil action.

22 I. The rules of civil procedure shall not apply to  
23 the de novo hearing, but it shall be conducted so that both  
24 contentions and responses are amply and fairly presented. To  
25 this end, the independent arbitrator shall permit either party

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1 to call and examine witnesses, cross-examine witnesses and  
2 introduce exhibits. The technical rules of evidence shall not  
3 apply, but, in ruling on the admissibility of evidence, the  
4 independent arbitrator shall require reasonable substantiation  
5 of statements or records tendered, the accuracy or truth of  
6 which is in reasonable doubt.

7 J. The local school board or governing authority  
8 has the burden of proof and shall prove by a preponderance of  
9 the evidence that, at the time the notice of termination was  
10 served on the employee, the local ~~[school board or governing~~  
11 ~~authority]~~ superintendent or state agency administrator had  
12 just cause to terminate the employee. If the local school  
13 board or governing authority proves by a preponderance of the  
14 evidence that there was just cause for ~~[its]~~ the action, then  
15 the burden shifts to the school employee to rebut the evidence  
16 presented by the local school board or governing authority.

17 K. The independent arbitrator shall uphold the  
18 local school board's or governing authority's decision only if  
19 it proves by a preponderance of the evidence that, at the time  
20 the notice of termination was served on the employee, the local  
21 ~~[school board]~~ superintendent or ~~[governing authority]~~ state  
22 agency administrator had just cause to terminate the employee.  
23 If the local school board or governing authority fails to meet  
24 its burden of proof or if the school employee rebuts the proof  
25 offered by the local school board or governing authority, the

1 arbitrator shall reverse the decision of the local school board  
2 or governing authority.

3 L. No official record shall be made of the hearing.  
4 Either party desiring a record of the arbitration proceedings  
5 may, at ~~his~~ the party's own expense, record or otherwise  
6 provide for a transcript of the proceedings; provided, however,  
7 that the record so provided shall not be deemed an official  
8 transcript of the proceedings nor shall it imply any right of  
9 automatic appeal or review.

10 M. The independent arbitrator shall render a  
11 written decision affirming or reversing the action of the local  
12 school board or governing authority. The decision shall  
13 contain findings of fact and conclusions of law. The parties  
14 shall receive actual written notice of the decision of the  
15 independent arbitrator within ten working days from the  
16 conclusion of the de novo hearing.

17 N. The sole remedies available under this section  
18 shall be reinstatement or payment of compensation reinstated in  
19 full but subject to any additional compensation allowed other  
20 employees of like qualifications and experience employed by the  
21 school district or state agency and including reimbursement for  
22 compensation during the entire period for which compensation  
23 was terminated, or both, less an offset for any compensation  
24 received by the employee during the period the compensation was  
25 terminated.

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1           O. Unless a party can demonstrate prejudice arising  
2 from a departure from the procedures established in this  
3 section and in Section ~~[22-10-14]~~ 22-10A-24 NMSA 1978, such  
4 departure shall be presumed to be harmless error.

5           P. The decision of the independent arbitrator shall  
6 be binding on both parties and shall be final and nonappealable  
7 except where the decision was procured by corruption, fraud,  
8 deception or collusion, in which case it shall be appealed to  
9 the district court in the judicial district in which the public  
10 school or state agency is located.

11           Q. Each party shall bear its own costs and  
12 expenses. The independent arbitrator's fees and other expenses  
13 incurred in the conduct of the arbitration shall be assigned at  
14 the discretion of the independent arbitrator.

15           R. ~~[Local]~~ School districts shall file a record  
16 with the department ~~[of education]~~ of all terminations and all  
17 actions arising from terminations annually."

18           Section 6. Section 22-10A-26 NMSA 1978 (being Laws 1967,  
19 Chapter 16, Section 118, as amended) is amended to read:

20           "22-10A-26. EXCEPTED FROM PROVISIONS.--Sections ~~[22-10-12~~  
21 ~~through 22-10-14.1]~~ 22-10A-22 through 22-10A-25 NMSA 1978 do  
22 not apply to the following:

23           A. a ~~[certified school instructor]~~ licensed school  
24 employee employed to fill the position of a ~~[certified school~~  
25 ~~instructor]~~ licensed school employee entering military service;

1           B. a person who is employed as a [~~certified~~]  
2     licensed school administrator; or

3           C. [~~a non-certified~~] an unlicensed school employee  
4     employed to perform primarily district-wide management  
5     functions."

6           Section 7. Section 22-10A-27 NMSA 1978 (being Laws 1986,  
7     Chapter 33, Section 24, as amended) is amended to read:

8           "22-10A-27. DISCHARGE HEARING--LICENSED SCHOOL EMPLOYEES  
9     PROCEDURES.--

10          A. A local [~~school board~~] superintendent or the  
11     governing authority of a state agency may discharge a  
12     [~~certified~~] licensed school employee only for just cause  
13     according to the following procedure:

14                 (1) the local superintendent or governing  
15     authority shall serve a written notice of [~~his intent to~~  
16     ~~recommend~~] discharge on the [~~certified~~] licensed school  
17     employee in accordance with the law for service of process in  
18     civil actions; and

19                 (2) the local superintendent or governing  
20     authority shall state in the notice of [~~his intent to~~  
21     ~~recommend~~] discharge the cause for [~~his recommendation~~] the  
22     discharge and shall advise the [~~certified~~] licensed school  
23     employee of [~~his~~] the licensed school employee's right to a  
24     discharge appeal hearing before the local school board or  
25     governing authority as provided in this section.

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1           B. A [~~certified~~] licensed school employee who  
2 receives a notice of [~~intent to recommend~~] discharge pursuant  
3 to Subsection A of this section may exercise [~~his~~] the right to  
4 [~~a~~] an appeal hearing before the local school board or  
5 governing authority by giving the local superintendent or state  
6 agency administrator written notice of that election within  
7 five working days of [~~his~~] the licensed school employee's  
8 receipt of the notice [~~to recommend~~] of discharge.

9           C. The local school board or governing authority  
10 shall hold a discharge appeal hearing no less than twenty and  
11 no more than forty working days after the local superintendent  
12 or state agency administrator receives the written election  
13 from the [~~certified~~] licensed school employee and shall give  
14 the [~~certified~~] licensed school employee at least ten days  
15 written notice of the date, time and place of the discharge  
16 appeal hearing.

17           D. [~~Each party~~] The local superintendent or state  
18 agency administrator and the [~~certified~~] licensed school  
19 employee may be accompanied by a person of [~~his~~] the party's  
20 choice.

21           E. The parties shall complete and respond to  
22 discovery by deposition and production of documents prior to  
23 the discharge appeal hearing.

24           F. The local school board or governing authority  
25 shall have the authority to issue subpoenas for the attendance

1 of witnesses and to produce books, records, documents and other  
 2 evidence at the request of either party and shall have the  
 3 power to administer oaths.

4 G. The local superintendent or state agency  
 5 administrator shall have the burden of proving by a  
 6 preponderance of the evidence that, at the time of the notice  
 7 of [~~intent to recommend~~] discharge, [~~he~~] the local  
 8 superintendent or state agency administrator had just cause to  
 9 discharge the [~~certified~~] licensed school employee.

10 H. The local superintendent or state agency  
 11 administrator shall present [~~his~~] evidence first, with the  
 12 [~~certified~~] licensed school employee presenting [~~his~~] evidence  
 13 [~~thereafter~~] after. The local school board or governing  
 14 authority shall permit either party to call, examine and cross-  
 15 examine witnesses and to introduce documentary evidence.

16 I. An official record shall be made of the hearing.  
 17 Either party may have one copy of the record at the expense of  
 18 the local school board or governing authority.

19 J. The local school board shall render its written  
 20 decision within twenty days of the conclusion of the discharge  
 21 appeal hearing."

22 Section 8. Section 22-10A-28 NMSA 1978 (being Laws 1986,  
 23 Chapter 33, Section 25, as amended) is amended to read:

24 "22-10A-28. APPEALS--INDEPENDENT ARBITRATOR--  
 25 QUALIFICATIONS--PROCEDURE--BINDING DECISION.--

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1           A. A [~~certified~~] licensed school employee aggrieved  
2 by a decision of a local school board or governing authority to  
3 discharge [~~him~~] the employee after a discharge appeals hearing  
4 held pursuant to Section [~~22-10-17~~] 22-10A-27 NMSA 1978 may  
5 appeal the decision to an independent arbitrator. A written  
6 notice of appeal shall be submitted to the local superintendent  
7 or state agency administrator within five working days from the  
8 receipt of the copy of the written decision of the local school  
9 board or governing authority.

10           B. The local school board or governing authority  
11 and the [~~certified~~] licensed school employee shall meet within  
12 ten calendar days from the receipt of the notice of appeal and  
13 select an independent arbitrator to conduct the appeal, or, in  
14 the event the parties fail to agree on an independent  
15 arbitrator, they shall request the presiding judge in the  
16 judicial district in which the public school or state agency is  
17 located to select the independent arbitrator. The presiding  
18 judge shall select the independent arbitrator within five  
19 working days from the date of the parties' request.

20           C. A qualified independent arbitrator shall be  
21 appointed who is versed in employment practices and school  
22 procedures. No person shall be appointed to serve as the  
23 independent arbitrator who has any direct or indirect financial  
24 interest in the outcome of the proceeding, has any relationship  
25 to any party in the proceeding, is employed by the [~~local~~]

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1 school [~~board~~] district or governing authority or is a member  
2 of or employed by any professional organization of which the  
3 [~~certified~~] licensed school employee is a member.

4 D. Appeals from the decision of the local school  
5 board or governing authority shall be decided after a de novo  
6 hearing before the independent arbitrator. The local school  
7 board or governing authority shall have the burden of proving  
8 by a preponderance of the evidence that, at the time of the  
9 notice of [~~intent to recommend~~] discharge, the local  
10 superintendent or state agency administrator had just cause to  
11 discharge the [~~certified~~] licensed school employee. The local  
12 school board or governing authority shall present [~~its~~]  
13 evidence first, with the [~~certified~~] licensed school employee  
14 presenting [~~his~~] evidence [~~thereafter~~] after.

15 E. The hearing shall be held within thirty working  
16 days from the selection of the independent arbitrator. The  
17 independent arbitrator shall give written notice of the date,  
18 time and place of the hearing, and such notice shall be sent to  
19 the [~~certified~~] licensed school employee and the local school  
20 board or governing authority.

21 F. Each party has the right to be represented by  
22 counsel at the hearing before the independent arbitrator.

23 G. Discovery shall be limited to depositions and  
24 requests for production of documents on a time schedule to be  
25 established by the independent arbitrator.

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1           H. The independent arbitrator may issue subpoenas  
2 for the attendance of witnesses and for the production of  
3 books, records, documents and other evidence and shall have the  
4 power to administer oaths. Subpoenas so issued shall be served  
5 and enforced in the manner provided by law for the service and  
6 enforcement of subpoenas in a civil action or in the manner  
7 provided by the American arbitration association's voluntary  
8 labor arbitration rules if that entity is used by the parties.

9           I. The rules of civil procedure shall not apply to  
10 the hearing, but it shall be conducted so that both contentions  
11 and responses are amply and fairly presented. To this end, the  
12 independent arbitrator shall permit either party to call and  
13 examine witnesses, cross-examine witnesses and introduce  
14 exhibits. The technical rules of evidence shall not apply,  
15 but, in ruling on the admissibility of evidence, the  
16 independent arbitrator may require reasonable substantiation of  
17 statements or records tendered, the accuracy or truth of which  
18 is in reasonable doubt.

19           J. An official record shall be made of the hearing.  
20 Either party may order a transcript of the record at [~~his~~] the  
21 party's own expense.

22           K. The independent arbitrator shall render a  
23 written decision affirming or reversing the action of the local  
24 school board or governing authority. The decision shall  
25 contain findings of fact and conclusions of law. The parties

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1 shall receive the written decision of the independent  
2 arbitrator within thirty working days from the conclusion of  
3 the hearing.

4 L. Unless a party can demonstrate prejudice arising  
5 from a departure from the procedures established in this  
6 section and in Section ~~[22-10-17]~~ 22-10A-27 NMSA 1978, such  
7 departure shall be presumed to be harmless error.

8 M. The decision of the independent arbitrator shall  
9 be final and binding on both parties and shall be nonappealable  
10 except where the decision was procured by corruption, fraud,  
11 deception or collusion, in which case it may be appealed to the  
12 court of appeals by filing a notice of appeal as provided by  
13 the New Mexico rules of appellate procedure.

14 N. Each party shall bear its own costs and  
15 expenses. The independent arbitrator's fees and other expenses  
16 incurred in the conduct of the arbitration shall be assigned at  
17 the discretion of the independent arbitrator."

18 Section 9. Section 22-10A-29 NMSA 1978 (being Laws 1967,  
19 Chapter 16, Section 120, as amended) is amended to read:

20 "22-10A-29. COMPENSATION PAYMENTS TO DISCHARGED  
21 PERSONNEL.--

22 A. Payment of compensation to any ~~[certified]~~  
23 licensed school ~~[instructor]~~ employee employed by a ~~[local~~  
24 ~~school board or by the governing authority of a state agency~~  
25 ~~and payment of compensation to any certified school~~

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1 ~~administrator employed by a local school board]~~ school district  
2 or state agency shall terminate as of the date [~~after a~~  
3 ~~hearing, that a written copy of the decision of the local~~  
4 ~~school board or the governing authority of the state agency to]~~  
5 that the local superintendent or state agency administrator  
6 notifies the licensed school employee of the decision to  
7 discharge [~~the person is served on the person. If the~~  
8 ~~compensation of the person discharged during the term of a~~  
9 ~~written employment contract is to be paid monthly during a~~  
10 ~~twelve-month period for services to be performed during a~~  
11 ~~period less than twelve months, the person shall be entitled to~~  
12 ~~a pro rata share of the compensation payments due for the~~  
13 ~~period during the twelve months in which no services were to be~~  
14 ~~performed].~~

15 B. In the event the action of the local [~~school~~  
16 ~~board]~~ superintendent in discharging a [~~certified]~~ licensed  
17 ~~school [instructor or administrator]~~ employee or the action of  
18 the governing authority of a state agency in discharging a  
19 [~~certified]~~ licensed school [~~instructor]~~ employee is reversed  
20 on final appeal, payment of compensation to the person shall be  
21 reinstated in full [~~but]~~ and subject to any additional  
22 compensation allowed other [~~certified]~~ licensed school  
23 [~~instructor or administrator]~~ employees of like qualifications  
24 and experience employed by the school district or state agency  
25 and including reimbursement for compensation during the entire

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1 period the compensation was terminated less an offset for any  
 2 compensation received by the person from a school district or  
 3 state agency during the period the compensation was  
 4 terminated."

5 Section 10. Section 22-10A-30 NMSA 1978 (being Laws 1967,  
 6 Chapter 16, Section 123, as amended) is amended to read:

7 "22-10A-30. SUPERVISION AND CORRECTION PROCEDURES--ALL  
 8 SCHOOL EMPLOYEES.--

9 A. The [~~state board~~] department shall prescribe by  
 10 [~~regulations~~] rule procedures to be followed by a [~~local~~]  
 11 school [~~board or the governing authority of a~~] district or  
 12 state agency in supervising and correcting unsatisfactory work  
 13 performance of [~~certified~~] licensed school [~~personnel~~]  
 14 employees before notice of [~~intent to~~] discharge is served upon  
 15 them [~~and by the governing authority of a state agency in~~  
 16 ~~supervising and correcting unsatisfactory work performance of~~  
 17 ~~certified school instructors before notice of intent to~~  
 18 ~~discharge is served upon them. These regulations~~].

19 B. The rules shall provide that written records  
 20 shall be kept on all action taken by a [~~local~~] school [~~board or~~  
 21 ~~the governing authority of a~~] district or state agency to  
 22 improve any [~~person's~~] school employee's unsatisfactory work  
 23 performance and all improvements made in [~~the person's~~] that  
 24 school employee's work performance. These written records  
 25 shall be introduced as evidence at any hearing for the [~~person~~]

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1 school employee conducted by the local superintendent, local  
2 school board or [~~the~~] governing authority of [~~the~~] a state  
3 agency."

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